IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

CENTRAL EXCISE APPEAL NO.202 OF 2006

The Commissioner of Central Excise
& Customs, Commissionerate, Daman .. Appellant.

Versus

Shree Bilimora Modh Ganchi Samasta
Pancha, Bangia Falia, Bilimora .. Respondent.

Mrs.S.V. Bharucha with Ms.Anamika Malhotra i/by T.C. Kaushik for the appellant.

Ms.Aparna Hirandagi with Ms.Padmavati Patil & Mr.M.H. Patil for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 26TH JULY, 2007.

P.C. :

1. Admit. Heard forthwith.

2. Reliance was placed by the learned Tribunal on the decision of the Larger Bench in CCE, Gurgaon V/s. Machino Montell reported in 2004 (168) ELT 466 (Tri.LB). That judgment was set aside by learned Bench of the Punjab & Haryana High Court.

3. It is the contention of the learned counsel for the respondents that in this case it does not involve excise duty but service tax and what the Tribunal ought to have considered is Section 80 of the Finance Act, 1994 which is not considered.

4. In the light of that, the impugned order is set aside. The matter is remanded back to the Tribunal for denovo hearing and moreso for consideration of Section 80 of the Finance Act, 1994.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)